

## REMARKS

Reconsideration of the present application is respectfully requested. Claims 1, 10, 11, 19, 20 and 21 have been amended. Applicants request the cancellation of claims 3, 4 and 15 without prejudice or disclaimer. Claims 1, 2, 5-14 and 16-22 remain pending in this application.

Applicants' representative spoke with the Examiner on January 11, 2005 about the apparent switching by the PTO of the drawing figures between the present case and U.S. Application Serial No. 10/667,952, also filed on September 22, 2003. The records of the Applicants' representative indicate that both the present application and the '952 application – which share common inventors and assignees – were filed with the correct drawing figures, and the Examiner has acknowledged the likelihood of drawing switching that occurs within the PTO as the Office is processing newly filed applications received through the mail. Applicants appreciate the Examiner's candid response, and have since filed substitute drawings in both applications to correct the PTO error. Additionally, Applicants desire the present application to be associated with Attorney Docket No. 105809, instead of No. 105811.

The disclosure was objected to because Figures 7-9 were not described in the "Brief Description of the Several Views of the Drawings" section of the application. Figures 7-9 are not apart of the '036 application, but instead are apart of the '952 application. The substitute drawings that have been previously filed in this application include Figures 1-6, so no reference to Figures 7-9 is now necessary.

The claims were objected to as being in narrative form and replete with indefinite and function or operational language. Applicants have amended various claims in consideration of the Examiner's objections. For example, claim 1 was amended to more clearly indicate how the various structural components of the invention achieve "a selectively controllable degree of

stability” on a given reference surface (e.g., the ground, a floor, etc.). Claims 10 and 21 were also objected to for various informalities, and these claims have been amended as suggested by the Examiner. Various claims were also amended to clarify surface 100 in the specification as a “reference” surface upon which the invention is placed during use, and to avoid confusion with top or engagement surface and bottom surface of the platform of the invention.

Claims 1, 5, 8, 10 and 13-14 were rejected under 35 U.S.C. 102(b) as being anticipated by Stack (U.S. 5,810,703), which discloses, among other things, a platform (16) and a fulcrum (S). Claims 1-5, 8, 10 and 13-14 were rejected under 35 U.S.C. 102(b) as being anticipated by Naville (U.S. 6,436,012), which discloses, among other things, a platform (10) and a fulcrum (11). Claims 3 and 4 have now been cancelled, and therefore, the 102 (b) rejection of claims 3 and 4 as being anticipated by Naville is considered moot.

Stack teaches an exercise board (16) that has a multi-level adjustable spacer or sphere (S). The sphere has a set of legs that work in conjunction with notches in a variable height spacer (22) so that the sphere can be set at a selective height with respect to the board on which the user stands. A higher height for the sphere allows for more “wobble” of the board off of the horizontal plane before the perimeter of the board will contact the underlying reference surface (e.g., the ground).

Naville teaches an exercising device that includes an upper foot receiving portion (10) and a spring portion (11, 12). The spring portion includes an intermediate elastic elongate member (12) and a lower spring layer arched downwardly (11). Sole (25) is attached to a lower surface of lower spring layer (11) for contact with an underlying reference surface when the device is in use and the user stands on fastening piece 101.

Amended claim 1 requires, among other things, that a hemispherical fulcrum be coupled with the bottom surface of a platform, and that the fulcrum is bifurcated into separate pivot members that each have a contact face such that when the pivot members are in abutting relation, the contact faces generally form a dome shape for resting on a reference surface, and when the pivot members are spaced from one another, the contact faces are presented as being separate and each having a half-dome shape. Figure 5 of the substitute drawings shows the pivot members 28 brought together to form the contacts faces 34 into the dome shape as the complete hemispherical fulcrum 18. Figure 6 of the substitute drawings, on the other hand, show the pivot members 28 spaced apart so that the contact faces 34 are half-dome shaped. The arrangement of the pivot members 28 shown in Figure 6 provides a more stable platform in the longitudinal direction of the track 36 when the members 28 are resting on reference surface 100.

Stack does not disclose or suggest any fulcrum that is bifurcated into separate pivot members. The sphere (S) that contacts an underlying surface is merely vertically adjustable with respect to the board via the variable height spacer. Moreover, Stack does not show any type of pivot members that are movable with respect to one another to form dome and half-dome shaped contact surfaces depending on whether the pivot members are brought together or spaced from one another. Therefore, Stack does not anticipate independent claim 1, and withdrawal of the rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by Stack is respectfully requested.

Claims 5, 8 and 10 depend either directly or indirectly from claim 1, and include all of the limitations of claim 1. Therefore, as claim 1 is now believed to be allowable over Stack, claims 5, 8 and 10 are also allowable, and withdrawal of the rejection of claims 5, 8 and 10 under 35 U.S.C. 102(b) as being anticipated by Stack is respectfully requested.

The Examiner has indicated that independent claim 11 is allowable, but has rejected claims 13 and 14 under 35 U.S.C. 102(b) as being anticipated by Stack. Applicants are confused by this rejection as claims 13 and 14 depend from allowable base claim 11. In any case, claim 11 requires “at least two pivot members” that are slidable with respect to the platform and each present rounded contact faces. As argued above, Stack simply does not include more than one pivot member that would be slidable in this fashion. Claims 13 and 14 also properly refer to “pivot members” that are positively recited in base claim 11. Therefore, as claims 13 and 14 include all of the limitations of base claim 11, which has been held allowable, withdrawal of the rejection of claims 13 and 14 under 35 U.S.C. 102(b) as being anticipated by Stack is respectfully requested.

With respect to Naville, there is now bifurcated hemispherical fulcrum in the shown exercising device. Even if components of the spring portion (10, 11, 12) of the device could serve generally as a fulcrum in this fashion, each pivot member is required to have a contact face for resting on the reference surface. Viewing the device in operation in Figure 1, the only components that have a face contacting the underlying reference surface (e.g., the ground) are the sole (25) and possibly the lower spring layer (11). However, these two members together are not movable to an abutting position where they form a dome shaped contact surface and movable apart from one another to form half-dome shaped contact surfaces. In fact, the sole (25) is fixedly attached with the layer (11) and does not move into contact with and apart from the layer (11) in operation. As such, Naville does not anticipate independent claim 1, and withdrawal of the rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by Naville is respectfully requested.

Claims 2, 5, 8 and 10 depend either directly or indirectly from claim 1, and include all of the limitations of claim 1. Therefore, as claim 1 is now believed to be allowable over Naville, claims 2, 5, 8 and 10 are also allowable, and withdrawal of the rejection of claims 2, 5, 8 and 10 under 35 U.S.C. 102(b) as being anticipated by Naville is respectfully requested.

As with the above rejection based on Stack, the Examiner has indicated that independent claim 11 is allowable, but has rejected claims 13 and 14 under 35 U.S.C. 102(b) as being anticipated by Naville, even though claims 13 and 14 depend from allowable base claim 11. In any case, claim 11 requires “at least two pivot members” that are slidable with respect to the platform and each present rounded contact faces for resting on a reference surface. Naville does not include any pivot members slidable with respect to a platform. The various spring portion members flex and bend with respect to any platform upon which the user stands, but there is no sliding action. Moreover, each pivot member must have a contact face for resting on the reference surface (ground). As argued above, only sole (25) and possibly the lower spring layer (11) have a face contacting the underlying reference surface, but sole (25) and (11) are not slidable with respect to any platform nor movable laterally to be proximal or distal to one another. Claims 13 and 14 also properly refer to “pivot members” that are positively recited in base claim 11. Therefore, as claims 13 and 14 include all of the limitations of base claim 11, which has been held allowable, withdrawal of the rejection of claims 13 and 14 under 35 U.S.C. 102(b) as being anticipated by Naville is respectfully requested.

Claims 6-7 and 9 were objected to as being dependent upon a rejected base claim, but otherwise allowable if rewritten to include all base claim and intervening claim limitations. Claims 6-7 and 9 depend either directly or indirectly from claim 1, which is now believed to be

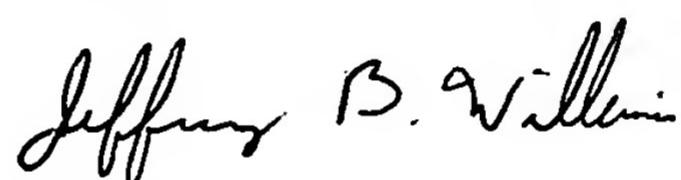
allowable over the references of record. Therefore, it is respectfully requested that claims 6-7 and 9 be found allowable in current claim form.

Applicants appreciate the Examiner's finding of claims 11-22 to be allowable, and believe that any outstanding issues with respect to claims 13 and 14 have been fully addressed with the above remarks.

Based on the foregoing, it is submitted that the Applicant's invention as defined by claims 1, 2, 5-14 and 16-22 is patentable over the references of record. Issuance of a Notice of Allowance is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment, to Deposit Account No. 19-2112.

Respectfully submitted,



Jeffrey B. Williams  
Reg. No. 43,269

Shook Hardy & Bacon  
2555 Grand Blvd.  
Kansas City, MO 64108  
(816) 474-6550  
(816) 421-5547 – fax

**Customer No. 05251**